Gregory Schopen

MONASTIC LAW MEETS THE REAL WORLD: A MONK'S CONTINUING RIGHT TO INHERIT FAMILY PROPERTY IN CLASSICAL INDIA

According to William of Saint-Thierry, the greater part of "the world" in the twelfth century was owned by monks.[1] William, of course, did not mean that it was owned by individual monks. "The Rule of St. Benedict was quite clear: personal poverty is required from the monks, but this is distinct from corporate possessions." Moreover, "the denial of private property [in the Rule] does not imply in any way a materially poor life-style."[2] The Rule of Saint Benedict, in fact, which J. P. Greene calls "the foundation upon which the entire structure of medieval monasticism in Western Europe was eventually built,"[3] has very little to say about corporate or institutional wealth or property. Its aim was directed, rather, toward "this vice of personal ownership," and on this it was, indeed, "quite clear."

Chapter 33 of the Rule, under the heading "Whether monks may have personal property," says in part: "It is of the greatest importance that this vice should be totally eradicated from the monastery. No one may take it upon himself to give or receive anything without the Abbot's permission, or to possess anything as his own, anything whatever, books or writing tablets or pen or anything at all. . . . Everything should be common to all,

[1] William's *Super Cantica,* cited in C. Rudolph, *The "Things of Greater Importance": Bernard of Clairvaux's Apologia and the Medieval Attitude toward Art* (Philadelphia: 1990), p. 315.

[2] J. Burton, *Monastic and Religious Orders in Britain, 1000–1300* (Cambridge: 1994), p. 11; and L. J. R. Milis, *Angelic Monks and Earthly Men: Monasticism and Its Meaning to Medieval Society* (Woodbridge: 1992), p. 18.

[3] J. P. Greene, *Medieval Monasteries* (Leicester: 1992), p. 2.

0018-2710/96/3502-0001$01.00

as it is written, and no one should call anything his own or treat it as such." And chapter 55 reads: "The beds should be frequently inspected by the Abbot as a precaution against private possessions. If anyone is found to have anything which was not given him by the Abbot, he is to undergo the severest punishment; and that this vice of personal ownership may be totally eliminated, everything necessary should be given by the Abbot; namely, a cowl, a tunic, stockings, shoes, a belt, a knife, a pen, a needle, a handkerchief and writing tablets, so that all excuses about necessity are removed."[4]

The clarity in Benedict's Rule in regard to "whether monks may have personal property" must at least partially be a function of the fact that he was able here—as elsewhere—to avoid sticky issues and the largely legal difficulties that could, and did, arise when an individual renounced real property. He may have been able to avoid these difficulties in part, perhaps, because one of his predecessors—the author of the only other "Rule" that he refers his monks to—had already dealt with them in some detail and in part, perhaps, because he was writing for a world on which the weight of Roman secular law was pressing much less heavily.[5]

Although Basil of Caesarea, Saint Basil the Great (330–79), "wrote no Rule, his conferences and replies to questions were treated as a guide and were quoted as a rule by St. Benedict and others."[6] These were translated into Latin in 397 and circulated widely.[7]

Basil, of course, lived in a world very different from Benedict's. "It is necessary," for example, "to recall that at this period the burdensome tax system inaugurated by Diocletian is still operative throughout the Roman Empire and that monks are laymen and are not, therefore, eligible to the immunities granted the clergy." So, although Basil "states that the monk upon his entrance into the monastery has renounced all right to the ownership and use of his possessions" and—as Benedict ruled—that he has no ownership rights in the property of the monastery, still

[4] Of the many translations of Benedict's Rule, I cite that recently reprinted in Abbot Parry, trans., *The Rule of Saint Benedict* (Leominster: 1990) (also easily available is the translation in O. Chadwick, *Western Asceticism* [London: 1958]). Dom Cuthbert Butler has noted that in regard to private ownership "St. Benedict speaks with quite unwonted vehemence" (Dom Cuthbert Butler, *Benedictine Monasticism: Studies in Benedictine Life and Rule*, 2d ed. (London: 1924), p. 146.

[5] On Italy in the sixth century, see the old but still readable E. S. Duckett, *The Gateway to the Middle Ages: Italy* (Ann Arbor, Mich.: 1938). I ignore here the much discussed question of Benedict's dependence on the Rule of the Master; for one recent study, see M. Dunn, "Mastering Benedict: Monastic Rules and Their Authors in the Early Medieval West." *English Historical Review* 105 (1990): 567–94.

[6] D. Knowles, *From Pachomius to Ignatius: A Study in the Constitutional History of the Religious Orders* (Oxford: 1966), p. 4.

[7] See P. J. Fedwick, "The Translations of the Works of Basil before 1400," in *Basil of Caesarea, Christian, Humanist, Ascetic: A Sixteen-Hundredth Anniversary Symposium*, ed. P. J. Fedwick (Toronto: 1981), 2:457–59.

Basil had to deal, for example, with prior unpaid taxes. His solution, according to M. G. Murphy, was to rule that "the monk actually renounces his rights to the ownership and Administration of the funds he has brought to the monastery, but not his obligations to pay the taxes which have accrued before his entrance."[8]

Given the complexity of Roman laws of inheritance in their full vigor, this was another area with which Basil—unlike Benedict—was forced to deal. On this question, Murphy, summarizing several passages from *The Ascetic Works,* says: "In regard to the property that might come to the monk by way of inheritance or donation, St. Basil teaches that his monastic profession has deprived him of all right to ownership of this," and "in the case of the inherited property, therefore, St. Basil recommends that it be entrusted to the proper ecclesiastical authority to be disposed of as the latter deems fit."[9]

Whether in Benedict or Basil, then, what characterizes relatively early Christian monastic legislation in regard to private ownership by monks, or any continuing right of inheritance, is its clarity: monks have no ownership rights, and although they might technically inherit, the property in question does not go to them but to "the proper ecclesiastical authority to be disposed of as the latter deems fit." Two points are worth noting here. First, these issues are explicitly engaged in Christian monastic literature, and positions in regard to them are clearly articulated. Second, we seem to see here—at least on these issues—a case where the important variable affecting the complexity of monastic legislation or rule is not age or time but the surrounding legal environment: Benedict's is the later rule but also the simplest. It is Basil's, the earlier Rule, that is also the most detailed and complex. It is possible that the same variable—and not date of composition or compilation—may have affected Buddhist monastic rules as well.

[8] M. G. Murphy, *St. Basil and Monasticism,* Catholic University of America, Patristic Studies, vol. 25 (Washington, D.C.: 1930), pp. 54–55. See also, more recently, G. Gould, "Basil of Caesarea and the Problem of the Wealth of Monasteries," in *The Church and Wealth,* Studies in Church History, vol. 24, ed. W. J. Sheils and D. Wood (Oxford: 1987), pp. 15–24, esp. 18–20; and G. May, "Basilius der Grosse und der römische Staat," in *Bleibendes im Wandel der Kirchengeschichte: Kirchen-historische Studien Hans von Campenhausen gewidmet,* ed. B. Moeller and G. Ruhbach (Tübingen: 1973), pp. 47–70. For the Long and Short Rules, see W. K. L. Clarke, trans., *The Ascetic Works of Saint Basil* (London: 1925), pp. 145–228, 229–351; on their complicated textual history, see J. Gribomont, *Histoire du texte des ascétiques de saint basile,* Bibliothèque du muséon 32 (Louvain: 1953). Gribomont argues that Basil originally addressed himself to all Christians and only later revised the Rules to be more explicitly monastic. For a good overview of his position, see J. Gribomont, "Le monachisme au sein de l'église en syrie et en cappadoce," *Studia Monastica* 7 (1965): 7–24. For a recent biographical study of Basil, see P. Rousseau, *Basil of Caesarea* (Berkeley: 1994).

[9] Murphy, pp. 55–56; see Gould, pp. 19–20; and other works cited in n. 8.

Far, far less is known about Buddhist monastic rules and therefore about Buddhist monastic attitudes toward private ownership by monks and continuing rights of inheritance, but one thing at least appears to be certain: neither the scholarly literature nor the primary source materials bearing on such topics that have been noted so far have anything like the clarity of Basil or Benedict. Typical of the scholarly literature is the old remark of H. Oldenberg's: "So the Buddhist monk also renounces all property. No express vow imposes on him the duty of poverty; both the marriage tie and the rights of property of him who renounces the world, are regarded as *ipso facto* canceled by the 'going forth from home into homelessness.'" But to this Oldenberg immediately adds a note that begins: "More accurately expressed: the monk, *who is resolved to remain true to the spiritual life,* looks upon his marriage as dissolved, his property as given away."[10]

More recently, I. B. Horner has said similar things. She first said: "It was particularly reprehensible for a Sakyan monk to steal, since at the time of his entry into the Order he *morally* renounced his claim to all personal and private possessions." Then she said: "The Buddhist *bhikkhu* has to renounce his worldly possessions before he is ordained, and after his ordination he should own no private property, but should regard his bowl and robe and other requisites as being the communal property of the Order. . . . But . . . there were no vows for a Sakyan *bhikkhu* to take. He did not make any vows, did not bind himself by vows. If he attempted right behavior, this was because his spiritual training led to the taming of the self."[11]

The ambiguity here is palpable—this would have been a lawyer's dream or a lawyer's nightmare, depending on which side he had to argue. A Buddhist monk "renounces all property" but only if he "is resolved to remain true to the spiritual life": renunciation of property could not therefore be effected by the fact of ordination itself but would depend on the individual's spiritual resolve, and no mechanism is provided to establish that. A Buddhist monk "morally renounced his claim to all personal and private possessions," but this need not entail an actual legal act nor have legal effect or force.

Neither the fault nor the ambiguity here belongs to Oldenberg or Horner. They are simply putting the best face on what can be gathered from the Pāli, or Mahāvihārin, Vinaya. That this Rule is deeply ambiguous, if not straightforwardly ambivalent, in regard to the question of

[10] H. Oldenberg, *Buddha: His Life, His Doctrine, His Order,* trans. W. Hoey (London: 1882), p. 355n; for the original German, see H. Oldenberg, *Buddha: sein Leben, seine Lehre, seine Gemeinde,* ed. H. von Glasenapp (Stuttgart: 1959), pp. 370, 449, n. 13; my emphasis.

[11] I. B. Horner, *The Book of the Discipline* (Oxford: 1938), 1:xxi, xlvii; my emphasis.

"whether monks may have personal property" has been noted a long time ago, and R. Lingat, for example, has richly demonstrated the kinds of problems this ambiguity or ambivalence created for the southeast Asian countries that had to deal with it in their secular legal system.[12]

It is important to note that it is not just the absence of positive statements in the Mahāvihārin Vinaya in regard to the legal status of a monk's property rights that creates the problems. It is as much—if not more so —the presence in this same Vinaya of the clear presumption that monks had and used private wealth. Oldenberg himself in the note already cited, said: "In one direction the spiritual law [*geistliche Recht*] permitted a noteworthy operation of the old rights of property surrendered by the monk to take effect: in certain cases [*in gewissen Fällen*] where the receiving of any new article whatever for monastic house-keeping was forbidden, e.g., a new almsbowl, he was permitted to take the object in question, if it had been made for him 'from his own means.'" The language here is interesting: it continues the fiction that "old rights of property" had in fact been surrendered, and it seems to put a narrow limit on when these old rights could take effect: *in gewissen Fällen.* Probably as a result of an admirable desire for brevity, Oldenberg cites only two instances of such cases, to which he adds *usw.*, "and so on." But this effectively conceals the fact that such cases are not rare in the Mahāvihārin Vinaya. There are at least sixteen cases in the last three sections of the Mahāvihārin Suttavibhaṅga alone, and it is probably not inaccurate to say that what Oldenberg is referring to is an established and common casuistry or escape clause in rulings of the Mahāvihārin Vinaya concerning allowable possessions. A significant number of prohibitions against accepting or possessing material properties, "e.g., a new almsbowl," are abrogated or rendered inapplicable if that property comes to the monk *attano dhanena,* "through his own, or private, wealth." The fact that monks have private wealth is therefore widely attested and assumed in this Vinaya and is repeatedly invoked to abrogate otherwise general rulings.[13]

It is, moreover, not just in the Suttavibhaṅga of the Mahāvihārin Vinaya that one finds it taken very much for granted that monks had and used private wealth. A particularly striking instance occurs in its Vassupanāyika-Khandhaka, or chapter on the rainy season retreat. This chapter has a long section dealing with the legitimate reasons for which a monk might break the rain retreat, although under normal circumstances this was strictly

[12] R. Lingat, "Vinaya et droit laïque: Etudes sur les conflits de la loi religieuse et de la loi laïque dans l'indochine hinayaniste," *Bulletin de l'école française d'extrême-orient* 37 (1937): 415–77.

[13] H. Oldenberg, ed., *The Vinaya Piṭakam* (London: 1879–83), 3.204.7, 16; 3.213, 215, 217, 234, 248, 257, 260; 4.48, 81, 89, 104, 190, 192, 193.

forbidden. A monk could, for example, legitimately break the rain retreat to be present, receive gifts, and recite Dhamma at the wedding of a lay brother's (*upāsaka*) children or at a series of house-dedication rituals. He could also go when a lay brother donated a vihāra or any of its appendages to the order. Or, significantly, he could go when "a monk . . . a nun . . . a probationer [or] a novice" donated a vihāra for the community or for him- or herself. Here, of course, it is again taken very much as a given that—exactly like lay brothers—monks, nuns, probationers, and novices acted as major donors to Buddhist monastic communities and had—again, like lay brothers—the means to do so.[14]

This vinaya material is interesting, but it is not alone in pointing to the fact that Buddhist monks and nuns had and used private wealth. Inscriptional records of all periods show monks and nuns as active and substantial donors almost everywhere in India. This activity was, in fact, first perceived as a problem in regard to the earliest series of donative records that have survived. H. Lüders said in regard to Bhārhut—much as G. Bühler had already said in regard to Sāñchī—that "it is perhaps striking to find monks and nuns making donations, as they were forbidden to own any personal property besides some ordinary requisites. Probably we have to suppose that they collected the money required for some pious purpose by begging it from their relatives or acquaintances. It is, however, never stated in Bhārhut as in Jain inscriptions from Mathurā, that the dedication was made by a layman at the request of some clergyman. The wording of the Bhārhut inscriptions refers to the Buddhist clergyman in such a way, as if he himself had made the donation."[15]

The "wording of the Bhārhut inscriptions," as well as the distinct difference in Jain records, is significant. Equally significant, however, is the fact that at least one Buddhist Rule, on at least three different occasions when it could have given its consent, withholds approval of monks' giving to a stūpa what "devout brahmins and householders" had given to them, suggests that such action would create friction with donors, and in each instance explicitly mandates an alternative action. One example from this Rule, the Mūlasarvāstivāda-vinaya, will suffice.[16]

[14] G. Schopen, "The Ritual Obligations and Donor Roles of Monks in the Pāli Vinaya," *Journal of the Pali Text Society* 16 (1992): 87–107.

[15] H. Lüders, ed., *Bharhut Inscriptions,* Corpus Inscriptionum Indicarum, vol. 2, pt. 2, rev. E. Waldschmidt and M. A. Mehendale (Ootacamund: 1963), p. 2; cf. G. Bühler, "Votive Inscriptions from the Sāñchi Stūpas," *Epigraphia Indica* 2 (1894): 93; G. Schopen, "Two Problems in the History of Indian Buddhism: The Layman/Monk Distinction and the Doctrines of the Transference of Merit," *Studien zur Indologie und Iranistik* 10 (1985): 9–47.

[16] *The Tog Palace Manuscript of the Tibetan Kanjur* (Leh: 1975–80), 'dul ba, Ta 293b. 6–294b.2; see also Ta 7a.4–8a.1, 292b.6–293b.3; hereafter cited as *Tog.* All translations are mine.

The passage starts by saying that "devout brahmins and householders" offered the monks perfumes, but they were refused by the monks; the Buddha then says they are to be accepted and, although the monks accept them, they then throw them away.

The Blessed One said: "They must not be thrown away!" The monks gave them to the stūpa of the hair and nails. The donors said: "Noble Ones, did we not see the stūpa of the hair and nails of the Buddha? We gave them to you, even though we could have given them to the stūpa of the hair and nails of the Buddha in the first place!"[17]

After that when the monks accepted perfumes they put them on the door of their cells. But devout brahmins and householders saw that and thought those cells were The Perfume Chamber. When they paid reverence to those cells, the Blessed One said: "They must not be put on the door of your cells, but inside them."[18]

But when the monks put them just inside the door this itself became a problem.

The Blessed One said: "They should not be put just inside the door, but, since all good smelling scents are beneficial for one's eyes, a perfumed palm print should be made on one's pillow. After that it should be applied to the eyes now and then."[19]

Passages such as these were almost certainly intended to discourage, if not to disallow, the practice of monks' giving as gifts those things that had been given to them. Such action is repeatedly said to elicit comment from lay donors and to create confusion—both of which are to be avoided. Moreover, although it is indirectly stated, a monk's obligation in these passages is—as is expressly stated elsewhere in this Vinaya—to use what he is given. Only then does it generate merit for its donor.[20]

[17] The stūpas of the hair and nails (*keśa-nakha-stūpa*) are a kind of "monument élevé à un Buddha de son vivant" containing his nail clippings and hair (for references, see G. Schopen, "An Old Inscription from Amarāvatī and the Cult of the Local Monastic Dead in Indian Buddhist Monasteries," *Journal of the International Association of Buddhist Studies* 14, no. 2 [1991]: 320–21, n. 34).

[18] I suspect there is a bit of intentional humor here—the Perfume Chamber was the central cell in a Buddhist monastery reserved for the Buddha himself (see G. Schopen, "The Buddha as an Owner of Property and Permanent Resident in Medieval Indian Monasteries," *Journal of Indian Philosophy* 18 [1990]: 181–217, esp. 193 ff.).

[19] The Tibetan here reads: "sgo'i drang thad du gzhag par mi bya'i/on kyang dri zhim po thams cad ni mig la phan pas/sngas kyi thad kar dri'i lag ris bya zhing/de nas dus dus su bsnam par bya'o/." The reference here to the "perfumed palm print" has a close parallel in Oldenberg, ed., *Vinaya Piṭakam* 2.123. For this and other references in Pāli, see J. Ph. Vogel, "The Sign of the Spread Hand or 'Five-Finger Token' (*Pañcaṅgulika*) in Pali Literature," *Verslagen en Mededeelingen der Koninklijke Akademie van Wetenschappen: Afdeeling Letterkunde,* vol. 5, pt. 4 (Amsterdam: 1909), pp. 218–35. *Tog,* 'dul ba, Ta 7b.3, also refers to the perfumed palm print.

[20] See esp. R. Gnoli, ed., *The Gilgit Manuscript of the Śayanāsanavastu and the Adhikaraṇavastu* (Rome: 1978), 35.1 ff., which explicitly refers to the "merit resulting from use"

All of this is perhaps sufficient to indicate that the Buddhist monastic literature that has been studied so far lacks both the clarity of Benedict and the detail of Basil in regard to personal ownership and the rights of inheritance of a monk. This comparative observation in itself may already allow some tentative hypotheses. The lack of clarity on personal ownership may indicate that for the writers of Buddhist monastic codes, personal ownership was not—as it was for Benedict—a vice, nor was it "of the greatest importance." Had it been either, there surely would have been much greater and more careful discussion. The absence in the vinaya literature so far studied of any explicit engagement of the question of a monk's continuing right to inherit family property is also suggestive. It may indicate that that literature—unlike Basil's—was composed or redacted in (or for) cultural milieus in which formal legal systems were little developed and the potential for conflict between monastic and secular law was not great. This would seem to exclude any highly brahmanized area of early India as a possible place of origin for this literature.

But the Buddhist vinaya literature that has so far been carefully studied—especially in the West—is only a small part of what has survived and may in no sense be representative. For a series of reasons—most of which are connected to historical accident—the Pāli, or Mahāvihārin, Vinaya alone has been thoroughly investigated and easily available. There are, however, significant portions of other vinayas extant in Chinese and in Sanskrit fragments. There is also one other virtually complete vinaya preserved in Tibetan, large parts of which are also available in Sanskrit. This last vinaya, the Mūlasarvāstivāda-vinaya, contains—as is already clear—important data, as well as some surprises, and as it becomes better known, it very likely will change the way in which we have thought about monastic Buddhism. The case in hand may be a case in point. [21]

Unlike the Mahāvihārin Vinaya, the Mūlasarvāstivāda-vinaya does explicitly engage the issue of a monk's continuing right to inherit family

(*paribhogānvayaṃ puṇyaṃ*). Oldenberg, ed., *Vinaya Piṭakam* 2.269–70, also contains a passage in which the Buddha is made to say, "Monks, you must not give to others what was given to you for your own use" (na bhikkhave attano paribhogatthāya dinnaṃ aññesaṃ dātabbaṃ); here, too, the donors complain, saying, in effect: "Do these monks think we do not know how to make our own gifts" (mayam ha na jānāma dānaṃ dātun ti). The obligation of monks to use what has been given to them is studied in some detail in Gregory Schopen, "The Lay Ownership of Monasteries and the Role of the Monk in Mūlasarvāstivādin Monasticism," *Journal of the International Association of Buddhist Studies* 18, no. 1 (1996), in press.

[21] Compare G. Schopen, "On Avoiding Ghosts and Social Censure: Monastic Funerals in the *Mūlasarvāstivāda-vinaya*," *Journal of Indian Philosophy* 20 (1992): 1–39, and "Doing Business for the Lord: Lending on Interest and Written Loan Contracts in the *Mūlasarvāstivāda-vinaya*," *Journal of the American Oriental Society* 114, no. 4 (1994): 527–54.

property and personal wealth. But before we can deal directly with the passage that does so, we must first look at a passage from the section of the Mūlasarvāstivāda-vinaya called the Cīvara-vastu that concerns an issue that, at first sight, does not seem directly related. The Cīvara-vastu passage seems to be concerned with the issue of one monk's promising his "robe and bowl"—which is often a code word for all types of personal property—to a second monk on the condition that the second monk will take care of the first in his final illness. The theme of attending to the sick and dying is, by the way, a common one in the Mūlasarvāstivāda-vinaya. I translate the passage from the Cīvara-vastu here from the Sanskrit text recovered from Gilgit.[22]

The setting was Śrāvastī. When a certain monk who was ill knew himself that he was going to die, he said to another monk: "For as long as I live, so long you should attend to me. When I am dead, my robe and bowl are for you to treat as you please [*yathāsukham*]."

The second monk began to attend to the dying monk. Some time later, the latter monk died. Then the monk who was the Distributor of Robes said to the attendant monk: "Bring the robe and bowl of that deceased monk! I will distribute it."

The attendant monk said: "He made them over specifically to me to treat as I pleased [*yathāsukham*]."

The monks reported this matter to the Blessed One.

The Blessed One said: "Monks, that deceased monk did not give it when still living; how now, he being dead, will he give it? This is not an act of giving when one says 'After I am dead it will be for him' [nāstīdaṃ dānaṃ mamātyayād asya bhaviṣyati]. Therefore, [the community] having taken possession of it, it is to be distributed. In this case, however, a good share is to be given to the attendant monk."

Given our great chronological and intellectual distance from documents of this sort, it would be easy enough to see in this passage just another piece of vinaya minutia dealing with monks cutting deals with other monks. But there is good evidence, as we will see, that Mūlasarvāstivādin monastic lawyers saw, or came to see, something here far more fundamental and potentially problematic, and there can be little doubt that a brahmanical jurist would have as well. The monastic lawyers were, or came to be, much less concerned with the specific case than with the general principle that its adjudication put in place. The case turns on something approaching absolute possession—*yathāsukham*. But the principle denies that such possession, or any valid possession, can be effected by what, for lack of a better term, might be called an oral

[22] N. Dutt, ed., *Gilgit Manuscripts* (Calcutta and Srinagar: 1939–59), 3.2.124.1–10 (in Tibetan, *Tog* 'dul ba, Ga 136b.2–6); all translations of this work are mine.

testament made prior to death: "This is not [a valid] act of giving when one says 'After I am dead it will be for him.' " Restricted in its application to the sphere of monastic law—applied, that is, only to the actions of monks—this principle could have been, presumably, implemented without serious difficulties, although it would have placed monastic law at variance with brahmanical law. But in this case, it was not so limited but was annunciated without limitation and was therefore, presumably, intended or understood to have universal application. Such unrestricted application would, however, have put monastic law on a collision course with brahmanical law. Although scholars have argued over the vocabulary and the conditions placed on it, it is generally accepted that "the *Smṛtis* recognize in regard to the head of the household the right to proceed while still living with the partition of his property among his heirs," and Lingat has suggested that this must have frequently taken place, for example, "during the course of his last illness."[23] In other words, unless its application were to receive some restriction, the general principle delivered in our passage declares invalid what was almost certainly commonly practiced in brahmanical milieus and clearly recognized as a right by the Smṛitis. If the Mūlasarvāstivāda-vinaya had been redacted in, or was intended for use in, tribal areas or communities little influenced by brahmanical law—and there must have been many of both in early India—then this principle could have been unproblematic. But in any highly brahmanized areas—and it appears likely that most early Buddhist communities arose in such areas—something or someone would clearly have to give. The evidence suggests that it was the monks and that in giving, they gained.

What evidence we have comes from another text in the Mūlasarvāstivāda-vinaya, a text that presents a situation that is almost exactly what could have been foreseen when the general principle presented in our first text operated in a brahmanical milieu and that, in fact, quotes that very principle as the words of the Buddha. This second text is not, as far as I know, preserved in Sanskrit, so its citation here is based on the Tibetan translation.

The case occurs in the section called the Kṣudraka-vastu[24] and concerns a householder (*khyim bdag/gṛhapati*) from Śrāvastī who married and had three sons, the youngest of whom entered the Buddhist order. The father falls ill; then the text says:

[23] Lingat, "Vinaya et droit laïque" (n. 12 above), pp. 461–62 and the sources cited in his notes. See also T. Mukherjee and J. C. Wright, "An Early Testamentary Document in Sanskrit," *Bulletin of the School of Oriental and African Studies* 42, no. 2 (1979): 297–320, esp. 318–20.

[24] *Tog,* 'dul ba, Ta 377a.2–379a.4; in the Derge edition of *The Tibetan Tripitaka* (Taipei: 1991), 'dul ba, Tha 252b.3–254a.1.

Although he was treated with medicines made from roots, stalks, leafs, flowers, and fruits, his illness did not abate. When the feelings that end in death appeared and the time of death could not be far off, then, having assembled his friends, relatives, brothers, and neighbors, the father said to his two oldest sons: "Sons, however little there is in my house, bring all of that and come!"

Hearing his words, they brought all of that and came.

The father then said to those friends, relatives, brothers, and neighbors: "Listen, sirs! I have three sons. These are the two older; the youngest has entered the order of the Buddhist śramaṇas. Therefore, whatever property there is in my house, however small, all of that must be divided equally."

When he had said this—since it has been said:

> All accumulations end in destruction. All elevations end in a fall.
> All unions end in separation. Life, to be sure, ends in death—
> He died.[25]

We have here the description of a perfectly regular procedure: a father making, while alive but close to death, an equal partition of his estate, by oral declaration, to his sons. The only unusual element is, of course, the fact that one of the sons is a Buddhist monk. But this is unusual only because dharmaśāstra, as far as I know, never directly addresses such a case. There is to this point no objection raised—although equal division among all sons was by no means free of controversy in brahmanical law itself[26]—and no one, including the two elder brothers, appears to see anything problematic here. The division should have been, and—as we will see—was taken to be, an accomplished fact.

When the youngest son, who was a monk, heard that his father had died, he is said to have thought: "I should go to recite Dharma and give consolation to my foster mother and elder brothers."[27] But this intention was formed, the text explicitly says, after the funeral and after the "two eldest sons had offered Śrāddha." The inclusion of this bit of information was very likely a calculated move on the part of the redactor: he very likely knew, and expected his readers to know, that aside from a

[25] This verse, cited editorially to explain the fact of death, occurs commonly in the Mūlasarvāstivāda-vinaya (see, e.g., Dutt, ed., *Gilgit Manuscripts,* 3.4.57.9; and C. Vogel and K. Wille, *Some hitherto Unidentified Fragments of the Pravrajyāvastu Portion of the Vinayavastu Manuscript Found near Gilgit,* Nachrichten der Akad. der Wissenschaften in Göttingen, vol. 1, Philologisch-Historische Klasse 1984, no. 7 (Göttingen: 1984), p. 332; Gnoli, ed., *The Gilgit Manuscript of the Saṅghabhedavastu* (Rome: 1977–78), 2.38). But it also occurs in the Mahābhārata and in some brahmanical death liturgies (see P. V. Kane, *History of Dharmaśāstra,* 2d ed. [Poona: 1973], 4:237).

[26] R. Lingat, *The Classical Law of India,* trans. J. D. M. Derrett (Berkeley: 1973), pp. 61–62, 192–93).

[27] I am unsure here of the term I have translated as "foster mother." The Tibetan has *ma yar mo,* which appears to mean the same thing as *ma gyar* and *ma tshab.* Since there is no other reference to the woman of the house, it is not possible to determine why this particular term might have been used. The woman's status, however, almost certainly had no bearing on the case.

preemptory oral partition made while the father was still living, "the heir is he who performs the funeral rites, who offers the rice-balls called *piṇḍas* to the ancestors."[28] Since the monk did not know about the first and had not performed the second, he could not—the redactor implies—have had any expectation of receiving an inheritance when he returned. This could only have reinforced the explicit motives already attributed to him, although his motives will again be explained. The redactor, it seems, has thought through his case.

When the monk returns to Śrāvastī, "he put away his robe and bowl in the Jetavana Monastery and, when he had recovered from the fatigue of his journey, went to his own house"—there was here no unseemly haste. Then,

The members of the household saw him and wept. Hearing the weeping the neighbors assembled. Some, letting out cries, wept. The eyes of some filled with tears. Since the youngest son was still an ordinary monk, when he heard that large group sitting there and crying, his eyes, too, were filled with tears.

A neighbor woman said to him: "Son, do not lament! Since your father had done meritorious actions, he has gone to the land of the gods. Moreover, your father, having assembled friends, kinsmen, brothers and neighbors, has also given a third share of his property to you."

Once again, the redactor explains to his readers the monk's action: he wept when he heard the crowd wailing—something his readers presumably would not have expected an advanced monk to do—because he was a *pṛthagjana* (de so so'i skye bo yin pas). This is a technical term commonly applied to ordinary monks, monks who have not yet achieved any of the seven preliminary stages that lead to the state of an arhat.[29] Here too, it seems, the redactor is setting up his reader, preparing him, because in what immediately follows, the neighbor woman is presented as misunderstanding the monk's tears: she implies by her reassurances that she thought that the monk was crying—at least in part—because he thought he had not received any of the inheritance. But that allows even an ordinary monk to make some major points by quoting vinaya—it is a clever piece. In response to the neighbor woman's assurances, the text continues:

He said:[30] "That which the Blessed One has said is indeed this: 'saying "When I have died this must be given to him" is not an act of giving.'" Knowing

[28] Lingat, *Classical Law*, p. 58.

[29] On the term *pṛthagjana*, and for further references, see G. Schopen, "Ritual Rights and Bones of Contention: More on Monastic Funerals and Relics in the *Mūlasarvāstivāda-vinaya*," *Journal of Indian Philosophy* 22 (1994): 31–80, esp. pp. 53–55.

[30] The Tibetan text actually reads *des bsams pa*, "he thought," but context makes it clear that this is an oversight. This sort of thing, as well as the less than careful marking of the

this, I do not therefore lament on this account. But since my father has done what is difficult to do for me, tears involuntarily appear. The Blessed One has also said: 'A father and mother do what is difficult for a son—they are nourishers, supporters, fosterers, and teachers of the worlds' many things. A son might carry his father on one shoulder, his mother on the other, for a full hundred years; he might establish them as lords with power over all the jewels, pearls, lapis lazuli, crystal, coral, silver, gold, emeralds, sapphires, rubies, and right-turning conches in this great earth—even by this much a son would neither profit nor repay his father and mother. But if one moved their father and mother away from the absence of devotion to complete devotion, encouraged them in it, led them to train, enter, and fully enter it; if one moved them from being confused in morality to complete morality, from avarice to complete liberality, from being confused in wisdom to complete wisdom, encouraged them in it, led them to train, enter, and fully enter it, then by this much a son would both profit and repay his father and mother.' Again, the Blessed One, in saying 'Saying "When I have died this must be given to him" is not giving,' forbids it."

The woman remained silent.

Our ordinary monk quotes here two texts from the vinaya, one of them twice. One appears to have been something of a trope expressing a monastic conception of filial piety and a justification for ordination. It is also quoted, for example, in the Section on Medicine in the Mūlasarvāstivāda-vinaya and, consequently, in the Divyāvadāna. In both places it is introduced with the phrase "it has formerly been said by the Blessed One" (*pūrvam uktaṃ bhagavatā*).[31] The other text, the one that is quoted twice, is almost certainly taken from the text of the Cīvara-vastu dealing with the dying monk's willing his robe and bowl to another monk that we started with. Notice first that both times it is quoted, it too is introduced with a phrase indicating it was the word of the Buddha, and although there are differences in word choice between the Tibetan translation of the passage in the Cīvara-vastu (bdag shi nas 'di'i yin no zhes bya ba'i sbyin pa 'di ni med pa yin pas) and the Tibetan text of our present

boundaries of direct speech that also occurs in our passage, are some of the characteristics of this part of the Tibetan translation of the Mūlasarvāstivāda-vinaya. Long ago, Rockhill had translated a part of a colophon attached to this translation that said: "This translation is not felicitous; it is full of obsolete expressions, is badly written, and in the latter part of the volume the correctors' minds appear tired and their faculties worn out; and all this is a source of much incertitude" (W. W. Rockhill, *The Life of the Buddha and the Early History of His Order; Derived from Tibetan Works of the Bkah-hgyur and Bstan-Hgyur* [London: 1884], p. 148). While these remarks are, on the whole, apt (if a little overstated), they apply only in certain regards to the text we are dealing with here, whose basic sense is not in doubt.

[31] *Tog,* 'dul ba, Ka 443a.4 ff. (bcom ldan 'das kyis sngon bka' stsal pa); E. B. Cowell and R. A. Neil, *The Divyāvadāna, A Collection of Early Buddhist Legends* (Cambridge: 1886), 51.19 ff., translated in E. Burnouf, *Introduction a l'histoire du bouddhisme indien* (Paris: 1844), p. 270.

passage (nga 'das nas 'di la byin cig ces zer ba ni med pa yin no), there is virtually no doubt that these represent variant attempts to translate the same original.

It should be noticed, too, that the redactor's ordinary monk does not cite any of the specifics of the case presented in the Cīvara-vastu but only the general principle that they gave rise to, indicating—as has already been suggested—that it was the general principle alone that had continuing significance for the tradition. Moreover, the redactor's monk applies this principle to a completely and significantly different set of circumstances, allowing us to see that, regardless of what the intent behind the original ruling was, by the time the text in the Kṣudraka-vastu was redacted, the principle was thought to have very broad, if not universal, application. The monk cites it in reaction to the neighbor woman's suspicion that he was crying in part because he thought he had been cut out of the estate. To indicate that he had had no such thoughts, he is made to say that the ruling found in the Cīvara-vastu rendered impossible any anticipation of anything coming to him by an oral partition made by his father while still alive, and he repeats the ruling a second time to indicate that the Buddha in fact forbade his acceptance of any property that might result from such a partition.

It is reasonable to assume that the ordinary monk's reactions represented the ordinary, established interpretation of the principle that was current at the time the redactor put together his text: regardless, again, of the original intention behind it, it was then understood to have unrestricted applicability and, significantly, to apply not only to actions of or between monks but to all such actions. What may have been only a ruling of monastic law was now understood to render all oral participation during life invalid. The neighbor lady was silent because, perhaps, she was stunned. In any case her silence here is not—as it is in formal monastic deliberative procedure—a sign of assent but of consternation and lack of clarity; she, in modern English idiom, simply does not know what to say.

The silence of an interlocutor frequently expresses such consternation elsewhere in this section of the Mūlasarvāstivāda-vinaya. In a passage dealing with the duties of the monk who looks after the monastery's trees, for example, pilgrims who go to Mount Vaidehaka to celebrate the festival inaugurated to mark the conversion of Śakra are oppressed by the heat. They suggest to the monks that they should plant trees there. The monks say that is not allowed by the Blessed One. The pilgrims, however, ask—quite reasonably—"But, Noble Ones, in this case what is the transgression?" The monks have no response and remain silent.[32] In

[32] *Tog,* 'dul ba, Ta 349b.2.

another interesting passage detailing the formal procedures for abandoning a vihāra whose donor or "owner" (*vihārasvāmin*) has been seized by the king (a passage that by the way, clearly indicates that donors had continuing rights of ownership in a vihāra), the monks are criticized by the donor for running away before they consult the donor's relatives. In the face of this criticism, the monks were "rendered speechless and remained silent" (de dag spobs pa med par cang mi zer bar 'dug pa).[33] In these two instances—as in all such cases—silence calls for and receives the intervention of the Buddha to resolve the confusion and provide guidelines for future behavior. Our present case is just another example of this pattern. But it is worth noting that the Buddha intervenes here to provide guidelines for the monks, to be sure, but more important, he does so to resolve the confusion of the neighbor lady, that is to say, the lay community. This at least is how the redactor chose to present it.

The Buddha intervenes by providing an even broader general principle that modifies the general principle under discussion and thereby establishes clear limitations on the range of monastic law. Here is a piece of Buddhist legislation that rivals some of Saint Basil's. The text continues:

> The monks reported this matter to the Blessed One.
> The Blessed One said: "Monks, what I said did not refer to laymen but was said in reference to renunciants. When laymen would die thus having attachments, this is not a renunciant. Therefore, then, when this laymen thought 'When I have died this is given to him,' this indeed was an act of giving. Moreover, since he was not a renunciant, it should be accepted. When, further, it has been accepted, it should be used as property in whatever way one wishes."[34]

The Buddha's resolution of the case obviously works in several directions at the same time and does several things. It resolves the confusion in the specific case at hand. It resolves the conflict between monastic law and brahmanical law. It allows the monk in question to accept the property in question, and by its wording—which is even fuller here than in the Cīvara-vastu—it allows that monk full and absolute possession of that property: "It should be used as property in whatever way one wishes" (ji ltar 'dod pa bzhin du longs spyod du yongs su spyad par bya'o). But beyond that, it does two things of very considerable consequence: it imposes clear and unequivocal limits on the operation of

[33] *Tog*, 'dul ba, Ta 343b.1.

[34] bcom ldan 'das kyis bka' stsal pa / dge slong dag ngas ni khyim pa las dgnongs te gsungs pa ma yin gyi / 'on kyang rab tu byung ba las dgongs pa yin no / khyim pa dag ni chags pa dang bcas bzhin du 'chi bar 'gyur la rab tu byung ba ni ma yin no / de lta bas na de'i phyir khyim pa 'di snyam du / nga 'das nas 'di la sbyin no snyam du sems pa ni byin pa yin gyi / rab tu byung pa ni ma yin pas blang bar bya zhing / blangs nas kyang ji ltar 'dod pa bzhin du longs spyod du yongs su spyad par bya'o /

monastic law both specifically in regard to questions of inheritance and, it seems, as a general principle; it also establishes as a general ruling a monk's right to inherit and possess absolutely any family property that comes to him by means of an oral partition made by the head of his family while still living, saying, in effect, that while monastic law disallows such an oral will between monks, this has no bearing on the validity of such instruments when used by laymen to the benefit of monks.

In regard to the first of these broader concerns, it should be noted that this is not the only place in the Mūlasarvāstivāda-vinaya in which the question of the relationship between lay law and monastic law is explicitly engaged. It is engaged, for example, in another case that also involves inheritance, and here too we find much the same language used. The case involves the monk Upananda, who had accumulated a very considerable fortune. He dies, and the king's agents hear of it. They go to the king to ask his determination in regard to the situation: although it is never stated, the issue here is almost certainly the law, well known in this Vinaya and in dharmaśāstra, that the estate of one who is without heirs goes to the king.[35] The king orders his men to seal Upananda's cell, which they do. The text then adds a detail that almost certainly was intended to lay some groundwork for the claim that was about to be made: the cell was sealed when the monks were away performing the funeral rites for Upananda; that is to say, the monks, by their actions, had already established themselves, even in the eyes of the secular law, as the rightful heirs. When the monks return, they report the matter to the Buddha, and he tells the monk Ānanda to go to the king and say to him: " 'Great King, when you had government business, did you then consider the monk Upananda? Or when you took a wife or gave a daughter, did you consider Upananda? Or sometime during his lifetime, did you present Upananda with the standard belongings of a monk—robes, bowls, bedding and seats, and medicine for the sick? Or when he was ill, did you attend him?' If, Ānanda, he should answer no, this should be said: 'Great King, the affairs of the house of householders are one thing; those of renunciants quite another. You must remain unconcerned! This property falls to the fellow monks of Upananda. You must not acquiesce to its removal!' " The king's response, according to the redactor, was "Reverend Ānanda, as the Blessed One orders, just so it must Be!"[36]

[35] This law is explicitly stated, e.g., in Gnoli, ed. (n. 20 above), 69.20, where a childless banker says to himself: "na me putro na duhitā. Mamātyayāt sarvasvāpateyam aputraka iti kṛtvā rājavidheyaṃ bhaviṣyati iti" (I have no son or daughter. When I pass away all of my property, having been declared "sonless," will come to be subject to the king).

[36] Dutt, ed., *Gilgit Manuscripts* (n. 22 above), 3.2.119.1–10; *Tog*, 'dul ba, Ga 133a.6–b.4. For some preliminary remarks on this and the following text, see Schopen, "Ritual Rites," pp. 62–63.

Obviously, what we have here is only the monastic view of things. How a secular authority or brahmanical jurist would have written the account we simply do not know. But what is important is that this text, like our text from the Kṣudraka-vastu, shows us Mūlasarvāstivādin monastic jurists grappling with the relationship of lay and monastic law and trying, in this instance, to establish limits not on monastic law but on the jurisdiction of secular law. The text allows the king the chance to assert that in his political and domestic activities, he considered Upananda as he would a layman or that he had a specific relationship with Upananda while he was still living. But if he cannot do this—and he cannot—then he must accept the principle that "the affairs of the house of householders are one thing; those of renunciants quite another" (pṛthaṅ mahārāja gṛhiṇāṃ gṛhakāryāṇi; pṛthak pravrajitānām).[37] The king must, in other words, acknowledge that lay law does not apply to Buddhist monks in the same way—and with the same basic vocabulary—that the Buddha rules that monastic law does not apply to laymen.

But the case of Upananda, and the broad principle that the king accepts in his determination of it, had—like the ruling against the dying monk making an oral partition of his possessions to another monk—a continuing history in the Mūlasarvāstivāda-vinaya. It, too, is quoted in a related case that again involves inheritance and establishing the limits or jurisdiction of lay law. This case is particularly interesting because it also involves a written will and a further determination of who does and who does not fall into the categories "renunciant" and "householder."

All the details of this particularly rich account cannot be treated here, and I limit myself to only the matter directly germane to the main issue at hand. The case concerns a very wealthy householder, and, like the case of Upananda but some twenty pages later, it occurs in the Cīvara-vastu of the Mūlasarvāstivāda-vinaya.[38] After failing to have a child—that is, an heir—through invoking various gods, the householder decides to enter the Buddhist order. He approaches a monk, who shaves his head and begins to give him the precepts, but then—although he has undergone at least a part of the ordination ritual, certainly one of the most visible parts—he falls ill. The text notes that it was a serious illness that created an obstacle to his "going forth" (pravrajyāntarāyakareṇa ca mahatā jvareṇābhibhūtaḥ). The Buddha accordingly rules that the precepts cannot be given to him until he recovers but that an attendant who is a monk should be given to him. Monks attend to him even when he is taken home and even though now at home the text explicitly says that he was designated as a "shaven-headed householder" (tasya muṇḍo gṛhapatir

[37] This is rendered into Tibetan as "khyim pa rnams kyi khyim gyi bya ba dang / rab tu byung ba rnams kyi tha dad pas."

[38] Dutt, ed., *Gilgit Manuscripts,* 3.2.139.6–143.14; *Tog,* 'dul ba, Ga 146b.3–149b.2.

iti saṃjñā saṃvṛttā). This designation is oddly like the terms *monachi laici,* "lay monk," and *monachi barbati,* "bearded monk," which occur in medieval European monasticism.[39] Since medieval monks were clean shaven, a bearded monk, like a "shaven-headed householder" was—if not a contradiction in terms—clearly a mixed and conceptually messy category, and the emerging problem should be obvious: the case of Upananda established that lay law did not apply to renunciants (*pravrajita*), but where did a shaven-headed householder fall?

The shaven-headed householder, of course, does not recover but on the point of death prepares a written document containing all his property and wealth, sends it to the Jetavana monastery (tatas tena maraṇakālasamaye sarvaṃ santa[ka]svāpateyaṃ patrābhilekhyaṃ kṛtvā jetavane preṣitam), and then dies. The king's men hear of the householder's death and report to the king. They say first, alluding to what has been noted above was an established principle of law, "Lord, a shaven-headed householder who is sonless [*aputra*] has died." They then describe his considerable estate and inform the king of the written document (*patrābhilikhitaṃ*).

The redactor of this account has cleverly placed the competing concepts in the initial sentence of the report delivered to the king: the deceased is described as both a shaven-headed householder and sonless. The king must rule as to which of these two statuses will have determining influence. By the principle of lay law that was—as already noted—widely known in both the vinaya and dharmaśāstra, the estate of one who was sonless went to the king. But if the shaven-headed householder was not a layman, then this lay law did not—could not by the king's previous decision—apply to him. The king's response to the report is interesting, although once again the redactor has already laid the groundwork for the monastic claim.

The redactor has not once but twice pointed out that monks had attended to the shaven-headed householder when he was ill. This, by an established monastic law recognized in part even in the Cīvara-vastu case concerning the oral partition by the dying monk, establishes a claim to at least a part of the estate. More important, in the case of Upananda it was clearly implied that had the king been able to reply in the affirmative to the question "When [Upananda] was ill, did you attend to him?" he would have been able to advance a claim on the estate. The redactor has then, not surprisingly, already presented the case in a way

[39] Knowles (n. 6 above), pp. 29–30; these terms were applied to what were more generally called *conversi.* See, as a sample of the discussion, C. Davis, "The *Conversus* of Cluny: Was He a Lay-Brother," in *Benedictus: Studies in Honor of St. Benedict of Nursia,* ed. E. R. Elder (Kalamazoo, Mich.: 1981), pp. 99–107, and the sources cited in nn. 12, 13; D. J. Osheim, *A Tuscan Monastery and Its Social World: San Michele of Guamo, 1156–1348* (Rome: 1989), pp. 102–12.

prejudicial to the king. When the redactor has the king explicitly refer to the case of Upananda, it could only have been with a grin. Oddly enough, the significance of the written document is almost discounted, and this may show some continuing unease in regard to such instruments. "The king said: 'Even in the absence of a written document, I did not obtain the possessions of the Noble Upananda, how much less will I obtain such goods when there is a written document. But what the Blessed One will authorize that I will accept.'" The written document does not establish the case; it only strengthens it. What has actually occurred, however, is that the king, by his response, has tacitly accepted the inclusion of the shaven-headed householder in the category of renunciant by assimilating his case to that of Upananda. That this was the way the Mūlasarvāstivādin tradition understood the case is clear from Guṇaprabha's Vinaya-sūtra—a fifth-to-seventh-century compendium of the Mūlasarvāstivāda-vinaya—which refers to it. The Vinaya-sūtra says, "Who, for the purposes of entering the Order [*pravrajyārthaṃ*], has taken on the external appearance [of a renunciant], his head being shaved, etc., although not yet entered, he is to be seen [i.e. treated] as one who has entered [*pravrajitavad*]."[40] In other words, the shaven-headed householder—one who has undergone at least a part of the ritual of ordination, who has at least assumed the outward appearance of a renunciant—is to be treated as, and has the rights of, a renunciant. One of these rights, conceded already by the king in the case of Upananda, is that his estate is not subject to lay law.

Much more could—and should—be said about this case. But not here.[41] If its rulings could have been implemented, this would have expanded enormously the number of estates that the monastic community

[40] P. V. Bapat and V. V. Gokhale, ed., *Vinaya-sūtra and Auto-Commentary on the Same* (Patna: 1982), 46.20, my translation; on the date of Guṇaprabha, see Schopen, "Ritual Rights," pp. 63–64, and nn.

[41] It should, however, at least be noted that this case has been known to Western scholarship in a confused form for a long time. Although his observations have passed largely unnoticed, Dutt pointed out more than fifty years ago that chap. 36 of I-tsing's *A Record of the Buddhist Religion as Practised in India and the Malay Archipelago,* which was translated by Takakusu in 1896, is little more than a translation of a part of the passage in the *Cīvara-vastu* dealing with the estate of the shaven-headed householder (Dutt, ed., *Gilgit Manuscripts,* 3.2.xi). Takakusu, too, had suggested in a note that the "Chapter" had a "verbatim" parallel in a canonical Vinaya text. Failure to note this has misled several scholars, including Lingat (see Lingat, "Vinaya et droit laique" [n. 12 above], pp. 446 ff.) and J. Gernet (*Buddhism in Chinese Society: An Economic History from the Fifth to the Tenth Centuries,* trans. F. Verellen (New York: 1995), pp. 75–77). It of course did not help that I-tsing omitted the framing story and implied in his introductory remarks that the case dealt with monks. For a translation of the Sanskrit text, see Gregory Schopen, "Deaths, Funerals, and the Division of Property in a Monastic Code," in *Buddhism in Practice,* ed. D. S. Lopez (Princeton, N.J.: Princeton University Press, 1995), pp. 498–500.

might be able to make a claim on. It also must almost immediately call to mind the upaniṣadic ritual or "custom of renouncing when a person was at the point of death" that both the Upaniṣads and Puraṇas call *ātura-saṃnyāsa*[42] or the similar practice—called "entry *ad succurrendum*"—in medieval European monasticism by which dying individuals took monastic robes and the monastic community, as a consequence, generally received at least a part of their estates.[43] For now, however, it is important to note that the case of the shaven-headed householder is yet one more instance where Mūlasarvāstivādin jurists appear to be seriously struggling with the relationship and boundaries of monastic and lay law and one more instance where the issues are focused on questions of inheritance.

As far as I know, there is nothing like this explicit discussion of the problem of the relationship of lay and monastic law in the Pāli, or Mahāvihārin, Vinaya, nor does this Vinaya show much concern with problems of inheritance. These issues, as Lingat has so richly shown, had to be slowly, if not tortuously, worked out by the secular law of those southeast Asian Buddhist cultures who appear to have known only—and were therefore limited by—the Pāli Vinaya. The Pāli Vinaya does in fact once engage the issue of the validity of an oral disposition, but the relationship of monastic and lay law is never mentioned there, and the discussion in the Pāli Vinaya is exclusively concerned with internal disputes between the community of monks and the community of nuns. It has nothing to do with a monk's family property and refers only incidentally, it seems, to lay estates.[44] The question that remains, then, is how to account for this striking difference between these two vinayas.

[42] P. Olivelle, *Saṃnyāsa Upaniṣads: Hindu Scriptures on Asceticism and Renunciation* (Oxford: 1992), p. 74, and n. 19; Kane (n. 25 above), 4:184–85.

[43] L. Gougaud, "Dévotions et pratiques ascétiques du moyen age" (Paris: 1925), pp. 129–42; J. H. Lynch, *Simoniacal Entry into Religious Life from 1000 to 1260: A Social, Economic and Legal Study* (Columbus, Ohio: 1976), pp. 27–36.

[44] The passage occurs in Oldenberg, ed., *Vinaya Piṭakam* (n. 13 above), 2.267–68, and it is discussed in some detail in Lingat, "Vinaya et droit laïque," pp. 461–66. It is interesting to note that the Pāli Vinaya itself accepts the validity of an oral disposition made during life by monks, nuns, lay brothers, lay sisters or "anyone else" (*añña*) as long, it seems, as the beneficiary is the community of monks and nuns (the question of such a disposition between individuals is not engaged, nor is that of family property), but Buddhaghosa, the commentator, does not. Lingat says that Buddhaghosa expresses an opinion "qu'il a le soin de présenter comme indépendante du canon (*pālimuttakavinicchayo*)," according to which "entre religieux, en effet, une donation exécutoire après décès (*accayadānam*) n'est pas valable; elle est valable, au contraire, entre laïques." Lingat speculates on the reason for this difference, in the course of which he asserts that with Buddhaghosa's position "un droit religieux était né, distinct du droit laïque." The position of Buddhaghosa is, of course, very near to that found in our Mūlasarvāstivādin sources, and in light of these sources—which Lingat did not know—it is at least possible to suggest that Buddhaghosa was expressing an (or the) Indian position and that we have in his remarks another instance of Mūlasarvāstivādin influence on the Pāli commentaries (see E. Frauwallner, *The Earliest Vinaya and the Beginnings of Buddhist Literature* [Rome: 1956], p. 188, and sources cited

There has been, and remains, a very strong prejudice toward chronological explanations of such differences: the Pāli Vinaya, the "simplest," does not treat these issues because it is early; the Mūlasarvāstivāda-vinaya, the most "complex," does because it is late. But even bracketing the distinct possibility that both these vinayas are late, this solution—although its simplicity highly recommends it to some—does not exhaust the possible explanations. And it is here that the relationship between the Rule of Benedict and the Rules of Basil might serve as an analogy, although it can only be that.

Basil, it seems, did not write the complex, detailed rules on inheritance that he wrote because he came late in the chronological development of Western monastic rules but rather, it seems, because at an early date he and his communities had to interact with, and come to terms with, an established and powerful competing system of secular law that already governed such matters. He took up, for example, the question of the monk's obligation to pay taxes on family property not because this question related to developments that had occurred within monasticism itself but because he and his communities—if they were to develop and avoid difficulties—had to adjust themselves to the tax laws of Diocletian that were already in effect and enforced in their world. It is, I think, not unreasonable to suggest that the rulings we have found in the Mūlasarvāstivāda-vinaya might well have come out of similar sets of circumstances.

It has already been argued elsewhere that the redactors of the Mūlasarvāstivāda-vinaya developed a set of rulings governing the treatment of the monastic dead in response both to brahmanical preoccupations with purity and pollution that surrounded them and, significantly, to bring the rules of monastic inheritance into line with the rulings of dharmaśāstra that stipulated that for one to inherit, he must of necessity perform the funeral rites for the deceased.[45] It seems very likely that the cases and rulings we have looked at here may have resulted from the same pressures, and, to judge by the traditional foci of brahmanical law, it would seem reasonable to expect that this occurred very early.

in his n. 4; H. Bechert, "Zur Geschichte der buddhistischen Sekten in Indien und Ceylon," *La nouvelle clio* 7–9 [1955–57]: 355–56). For the larger question of the relationship between lay and monastic law in the Pāli Vinaya, I can only point to Oldenberg, ed., *Vinaya Piṭakam,* 1.138, where the Buddha allows monks to comply with requests made by kings (anujānāmi bhikkhave rājūnaṃ anuvattitun ti). But this case does not seem to involve questions or conflicts of law. For wills in southeast Asia, see A. Huxley, "Wills in Theravada Buddhist S.E. Asia," *Recueils de la société Jean Bodin pour l'histoire comparative des institutions,* vol. 62, pt. 4 (1994), pp. 53–92; for the validity of oral disposition prior to death in the Mahiśāsaka-Vinaya, see Gernet, pp. 86–87.

[45] Schopen, "On Avoiding Ghosts" (n. 21 above), pp. 1–39.

The disposition of family property was already a major preoccupation in the dharma-sūtras. "In all the *dharma-sūtras*," Lingat says, "the rules of succession have a large place in the collection of duties which makes up *ācāra*," and some of these dharma-sūtras have been assigned dates as early as the sixth century B.C.E.[46] Given the age and extent of such rules and preoccupations in brahmanical circles, it would seem that any Buddhist monastic community in contact with such circles or any Buddhist community that had any hope of establishing itself in highly brahmanized communities or areas would have to clarify—and that quickly—the relationship between monastic rule and brahmanical law. Moreover, since the Buddhist community would have been, in several important senses at least, intrusive in such areas, it would have been it—not the established local tradition—that had to adjust and work out such issues.

The absence in the Pāli Vinaya of such explicit discussions of the relationship between lay and monastic law and of clear rulings on, for example, the matter of inheritance by monks of lay family property need not then point to its having been early but would seem to indicate that it was not—could not, in fact, have been—redacted in, or intended for use by, a monastic community in close contact with brahmanical cultures. This indication, however, may in turn actually rule out the possibility of the Pāli Vinaya's being an early Indian monastic code, since other data suggest that early Buddhism developed in close proximity to brahmanical cultures, and it may point—as other data also seem to[47]—toward the possibility that the Pāli Vinaya was redacted in, and intended for use by, Buddhist monastic communities in Sri Lanka, where there is very little evidence, until very late, for any system of non-Buddhist formal law and where church and state appear to have been very little separated.[48]

The Mūlasarvāstivāda-vinaya, on the other hand, reveals a monastic community preoccupied with the separation of church and state, a community in the thick of negotiating their boundaries. We seem to see these negotiations at several different stages in the passages we have studied here, and the process seems to have been ongoing. This would be per-

[46] Lingat, *Classical Law* (n. 26 above), pp. 58, 18–27.

[47] See G. Schopen, "The Monastic Ownership of Servants or Slaves: Local and Legal Factors in the Redactional History of Two *Vinayas*," *Journal of the International Association of Buddhist Studies* 17.2 (1994): 145–73.

[48] See A. Huxley, "How Buddhist Is Theravāda Buddhist Law?" in *Buddhist Forum*, ed. T. Skorupski (London: 1990), 1:41–85; "Sri Lanka has produced no lasting tradition of written secular law texts" (p. 42), and "Sri Lankan Buddhists, despite 1800 years of literate culture, did not produce a lasting textual tradition of secular laws" (p. 82); cf. Lingat ("Vinaya et droit laïque," p. 466): "On s'étonne que Ceylan ait accepté sans discussion apparente l'usage du testament importé par les Anglais. Mais on est si mal renseigné sur l'état ancien du droit dans ce pays qu'on ne peut former aucune conjecture sur la véritable coutume indigène."

fectly consistent not only with Buddhist monastic communities who were living in brahmanical areas but with Buddhist monastic communities that were living in states ruled by brahmanized kings; all of the evidence would suggest that, with few exceptions, this was in fact precisely the kind of state that most Buddhist monastic communities in India had to deal with.

Considerations of this sort must for now, of course, remain conjecture and hypothesis, but at least one thing need not. Regardless of its early history, which remains controversial,[49] there are good indications that the Mūlasarvāstivāda-vinaya was an important influence in Indian Buddhism from the Gupta period on: there is seemingly strong evidence for its presence and influence at Ajaṇṭa in the fifth century; Guṇaprabha may place it at Mathurā during the period between the fifth and seventh centuries; in the seventh century, again, it was known and used in such widely separated places as Tāmralipti in Bengal, Nālanda in Bihar, and Gilgit in Pakistan; still later at least Guṇaprabha's compendium or summary of it was known at Vikramaśīla; and the fact that it was taken as the sole canonical text of vinaya by the Tibetans suggests that it had great authority everywhere in eastern India in the communities from which the Tibetans got their Indian Buddhism.[50] It is, therefore, of considerable significance for understanding the nature of Buddhist monasticism and, perhaps, the extensive donative activity of individual Buddhist monks in these areas and periods, that this Vinaya—as the passages we have looked at here establish—unequivocally and explicitly acknowledged and supported the continuing right of Buddhist monks to inherit family property and to have absolute possession of such property to be used "in whatever way one wishes." Buddhist monks, under such a rule, had every right to be rich. And, it seems, many were.

University of Texas, Austin

[49] For a selection of sources on the date of the Mūlasarvāstivāda-vinaya, see Schopen, "On Avoiding Ghosts," p. 36, n. 69. The dates suggested or asserted for it range from the beginning of the common era to not before the fourth or fifth century, whereas "d'après des études comparatives approfondies mais très partielles, les *Vinayapiṭaka* des Mūlasarvāstivādin paraît nettement plus archaïque que celui des Sarvāstivādin et même que le plupart des autres *Vinayapiṭaka* (A. Bareau, *Les sectes bouddhiques du petit véhicule* [Paris: 1955], p. 154).

[50] For sources, see Schopen, "The Buddha as an Owner" (n. 18 above), p. 213, n. 70.